



RAVALLI COUNTY ATTORNEY

George H. Corn, County Attorney
T. Geoffrey Mahar, Chief Deputy
John Bell, Deputy
Karen Mahar, Deputy
William E. Fulbright, Deputy
Alex Beal, Deputy

Ravalli County Courthouse
205 Bedford, Suite C
HAMILTON, MT 59840-2853
Phone (406) 375-6750
Fax (406) 375-6731

MEMORANDUM

TO: George H. Corn, Ravalli County Attorney ✓

CC: Ravalli County Commissioners
Ravalli County Planning Department
Karen Mahar, Deputy Attorney

FROM: Alex Beal, Deputy Attorney 

DATE: December 11, 2007

RE: Planning & Zoning Commission

RECEIVED

DEC 12 2007

Ravalli County Commissioners

--	--	--	--	--

George,

When last we spoke about this matter, I had anticipated requesting an Attorney General's opinion and in fact I subsequently spoke with Chris Tweeten about it. However, having had a few more days to sleep on it and let it ruminate in my brain, I think that the answer is clear enough that the AG's opinion is unnecessary.

Two statutes interact here, only one of which need be problematic. The troubling statute is MCA § 76-2-102 which states that "[t]he planning and zoning commission consists of the three county commissioners..." Obviously, either the word "the" or the word "three" has to go. In figuring that out, I think the answer lies within that statute and within § 76-2-101.

First, MCA § 76-2-102, lists the members of the Commission. They are "the three county commissioners, the county surveyor, two citizen members . . . and a county

COPY

official appointed by the county commissioners.” That number adds to seven. Additionally, § 76-2-101, states that “the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.”

Given that the Legislature went the extra step of specifically stating that the Planning and Zoning Commission will consist of seven members, I believe that resolves the dispute of whether there need be 3 or 5 Commissioners on there. Were there to be 5 Commissioners on the Planning and Zoning Commission, there would need to be 9 members of the Board.

We are in the uncomfortable position of having to strike a word out of a statute the Legislature has passed. However, as the statute is self-contradictory, it is a choice that we must make. Were we to strike the word “three” from MCA § 76-2-102, we would create a second conflict (with § 76-2-101) in order to do so. However, by striking the word “the” from MCA § 76-2-102, we do no further damage to the remaining zoning statutes. This seems the most harmonious way to comply with MCA § 1-2-101, which states that “[w] here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”

Thus, it is my opinion that the Planning and Zoning Commission must consist of three of the five Commissioners. They may select those three members as they deem appropriate.